

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FIRST BANK AND TRUST COMPANY,)

Plaintiff/Appellee/Counter-Appellant,)

v.)

THE CHEYENNE AND ARAPAHO TRIBES;)
JANICE PRAIRIE CHIEF-BOSWELL, in her)
representative capacity, if any, as the alleged)
Governor of the CHEYENNE AND ARAPAHO)
TRIBES,)

Defendants/Appellants/Counter-Appellees,)

and)

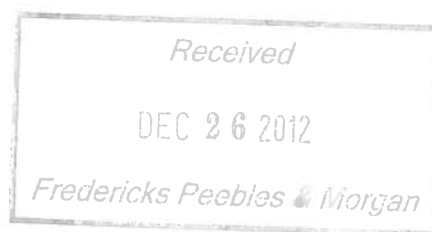
LESLIE WANDRIE-HARJO, in her)
representative capacity, if any, as the alleged)
Governor of the CHEYENNE AND ARAPAHO)
TRIBES,)

Defendant.)

FILED
SUPREME COURT
STATE OF OKLAHOMA
DEC 19 2012
MICHAEL S. HICHEL
CLERK

Sup. Ct. Case No. IN-110909

Dist. Ct. Case No. CV-2011-53



**FIRST BANK AND TRUST COMPANY'S RESPONSE IN OPPOSITION TO JOINT
MOTION TO SUPPLEMENT THE RECORD ON APPEAL**

First Bank and Trust Company ("First Bank"), Appellee/Counter-Appellant, hereby responds in opposition to the "Joint Motion to Supplement the Record on Appeal" filed on December 17, 2012, by the Appellants/Counter-Appellees. As outlined below, Appellants' proposed supplemental materials were not before the trial court with respect to this case, and, as such, cannot properly be incorporated into the appellate record. Sup. Ct. R. 1.33(d), 1.28(b).

During the trial court proceedings, Appellants moved jointly for summary judgment (Jt. Consol. Mot. & Br., R. 339, 341 (May 31, 2012)). First Bank, however, did not timely receive a copy of the motion or brief (Trial Tr. 115:1-6). In a belated attempt to rectify or disclaim their failure, Appellants now wish to supplement the record on appeal with three items: (1) a copy of an envelope purportedly "showing" the motion and brief were mailed to First Bank's counsel; (2) the certificates of service that were attached to the motion and to the brief; and (3) an e-mail from

Appellants' counsel to other counsel dated June 8, 2012—i.e., the day of trial—that appears to have transmitted the motion and brief as an attachment.

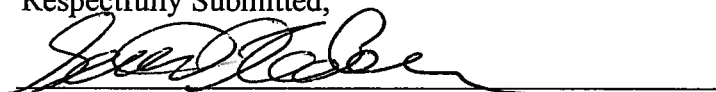
As for Item (2), these certificates of service already are part of the trial court record (R. 340, 354) and should not be granted special consideration to be included duplicatively. Regarding Items (1) and (3), neither of these items is part of the relevant "entire court record" as defined by Sup. Ct. R. 1.33(d). Items (1) and (3) were not before the trial court at the time of the decision being appealed and thus "are not properly part of the record on appeal." Sup. Ct. R. 1.28(b). "[T]he reviewing court is always limited to the issues actually presented below, as reflected by the record." *Frey v. Independence Fire & Cas. Co.*, 1985 OK 25, ¶ 6, 698 P.2d 17, 20; *accord U.S. ex rel. Farmers Home Admin. v. Hobbs*, 1996 OK 77, n.11, 921 P.2d 338, 341 n.11. "Only papers filed and exhibits presented to the trial court together with transcripts necessary to the appeal may be included in the record on appeal." Sup. Ct. R. 1.33(d).

Even if Items (1) and (3) were considered on appeal, they add nothing relevant, admissible, or useful to this Court's determination. First Bank's copy of Item (1), the envelope submitted as "showing" that First Bank was properly served, does not appear to bear a postmark or any legible date at all. Item (3), even if it were properly admissible, shows that at best First Bank received a copy of the motion and brief via e-mail the morning of trial, when there would have been no realistic way for First Bank to respond.

CONCLUSION

As outlined herein, the Joint Motion to Supplement the Record on Appeal should be denied.

Respectfully Submitted,



SCOTT MEACHAM, OBA #13216

JOHN M. THOMPSON, OBA #17532

ELIZABETH BARNETT LABAUVE, OBA #21102
ADAM C. HALL, OBA #21202
Crowe & Dunlevy
A Professional Corporation
20 North Broadway Ave., Suite 1800
Oklahoma City, Oklahoma 73102-8273
(405) 235-7700
(405) 239-6651 (Facsimile)

**ATTORNEYS FOR APPELLEE/COUNTER-
APPELLANT FIRST BANK AND TRUST
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2012, a true and correct copy of the
above and foregoing was served by U.S. Mail to:

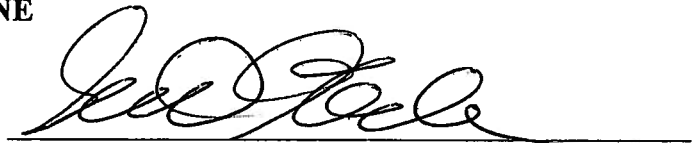
Jeremy Oliver
601 S. Johnson Lane
Wynnewood, Oklahoma 73098
**ATTORNEY FOR LESLIE WANDRIE-
HARJO**

Charles Morris, Attorney General
Kimberly Richey, Assistant Attorney
General
THE CHEYENNE AND ARAPAHO
TRIBES
P.O. Box 38
Concho, Oklahoma 73022
**ATTORNEYS FOR THE CHEYENNE
AND ARAPAHO TRIBES**

John E. Parris
Legislative Staff Attorney
Cheyenne and Arapaho Tribes
P.O. Box 38
Concho, Oklahoma 73022
**ATTORNEYS FOR THE FOURTH
LEGISLATURE OF THE CHEYENNE
AND ARAPAHO TRIBES**

Martha L. King
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
**ATTORNEYS FOR THE CHEYENNE
AND ARAPAHO TRIBES AND THE
CHEYENNE AND ARAPAHO TRIBES'
EXECUTIVE BRANCH**

Thomas S. Ivester
IVESTER, IVESTER & IVESTER,
ATTORNEYS AT LAW
P.O. Box 160
Sayre, Oklahoma 73662-0160
**ATTORNEYS FOR THE CHEYENNE
AND ARAPAHO TRIBES' LEGISLATIVE
BRANCH**





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CROWE & DUNLEVY
ATTORNEYS AND COUNSELORS AT LAW
OKLAHOMA CITY • TULSA • NORMAN

20 NORTH BROADWAY, SUITE 1800 • OKLAHOMA CITY, OK 73102-8273

TO:

Martha L. King
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027

Received

DEC 26 2012

Fredericks Peebles & Morgan

